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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/471,255	12/23/1999	JOSEE HAMEL	55190-012	7195
20277	7590	07/02/2004	EXAMINER	
MCDERMOTT WILL & EMERY LLP 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096			PORTNER, VIRGINIA ALLEN	
			ART UNIT	PAPER NUMBER
			1645	

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/471,255

Applicant(s)

HAMEL ET AL.

Examiner

Ginny Portner

Art Unit

1645

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment; claims recite a SEQ ID NO not previously searched.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: the amendment was not entered, and remarks were directed thereto.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 18.

Claim(s) objected to: 19 and 20.

Claim(s) rejected: 16,19-20,25,33-35,39-42.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Response to Amendment

1. For at least the following reasons the Amendment After Final submitted June 24, 2004 will not be entered:

- a. Claim 20 is proposed to recite SEQ ID NO 55; a sequence not previously searched which raises a new issue requiring further consideration and/or search After Final. This issue could be obviated through amendment of the claim to recite SEQ ID No 2; the elected and search sequence.
- b. Claim 25 is labeled as being “(Previously canceled)” and claims 40 and 42 depend from claim 25. The amendment upon entry would raise a new issue of indefiniteness for claims 40 and 42 depending from a canceled claim.
- c. Claim 34 is proposed to recite a combination of claim limitations not previously considered on the record “comprising a polypeptide having at least 95% sequence identity with a polypeptide having an amino acid sequence consisting of amino acids 2 to 1039 of SEQ ID NO 2”. Claim 34 currently depends from claim 25 which recites the phrase “ at least 95% identity SEQ ID NO 2”, and not the proposed species that has 95% identity with a polypeptide “consisting of amino acids 2 to 1039 of SEQ ID NO 2. This combination of claim limitations has not previously been considered on the record.

While claim 34 was directed to a polypeptide that lacks an N-terminal methionine, the reference sequence was not range of amino acids of SEQ ID NO 2, but SEQ ID NO 2. Claim 34 sets forth a reference sequence not previously recited in the claims.

- d.* Claim 35 is proposed to recite the phrase "at least 95% sequence identity with SEQ ID No 55", a combination of claim limitations not previously sequenced.


Response to Arguments

2. Applicant's arguments filed June 24, 2004 have been fully considered but they are not persuasive because Applicant's remarks are directed to a combination of claim limitations not entered After Final for at least the reasons set forth above.
3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginny Portner whose telephone number is (571) 272-0862. The examiner can normally be reached on 7:30-5:00 M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (571) 272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vgp
June 30, 2004


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